IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 14591 of 2004(K)

PETITIONERS:

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1. REVATHYNAL KANAKAMANI THAMPURATTY, W/O. P. SUNDAR RAJAN, 41/612, ST.MARTIN CHURCH ROAD, PALARIVATTOM, KOCHI-682 025, KERALA.

2. AVITTAMNAL KALAPAKAVALLY THAMLPURATTY, D/O ROHININAL AMBA THAMPURATTY, RESIDING AST KALABHAVAN, ST.MARTIN CHURCH ROAD, PALARIVATTOM, COCHIN-682 025, ERNAKULAM DIST.

3. MRS. GEETHA. R. VARMA, D/O. KASTHURU BHAI THAMPURATTY, RESIDING AT VIJAYADAMAM, THONALLOOR, PANDALAM, PATHANAMTHITTA DISTRICT.

4. MRS. MINI VARMA, W/O. RAVI VARMA THAMPURAN, RESIDING AT SUDARSANA PALAACE, THONALLOOR, PANDALAM, PATHANAMTHITTA DISTRICT.

5. MOHAN KUMAR. V., S/O. KAMALA DEVI THAMPURATTY, RESIDING AT SUDARSANA PALACE, THONALLOOR, PANDALAM, PATHANAMTHITTA DISTRICT.

6. MRS. HEMA R.K., D/O. P.R. KALPAKAVALLY THAMPURATTY, KALABHAVAN, ST. MARTIN CHURCH ROAD, PALARIVATTOM, KOCHI-25, ERNAKULAM DISTRICT.

7. MRS. SYAMA R.K. W/O. HARIKRISHNA VARMA RESIDING AT RAJAMANDHIRAM PALACE, THONNALLUR, PANDALAM, PATHANAMTHITTA DISTRICT.

8. POORAMNAL SURENDRAVARMA RAJA, S/O. P.R. RAMAVARMA RAJA, RETIRED RESIDING AT VIJAYADHAMAM PALACE, THONNALLUR, PANDALAM, PATHANAMTHITTA DISTRICT.

9. ANIL. S. RAJ, SON OF SUNDAR RAJAN, ADVOCATE, RESIDING AT 41/612, ST.MARTIN CHURCH ROAD, PALARIVATTOM, KOCHI-682 025, ERNAKULAM DISTRICT.

10. DR. ASOK. S. RAJ, SON OF SUNDAR RAJAN,
DOCTOR, RESIDING AT 41/612, KALABHAVAN
ST.MARTIN CHURCH ROAD, PALARIVATTOM,
KOCHI-682 028, ERNAKULAM DISTRICT.

11. ARUN. S. RAJ, SON OF SUNDAR RAJAN,
DOCTOR, RESIDING AT 41/612, KALABHAVAN
ST. MARTIN CHURCH ROAD, PALARIVATTOM,
KOCHI-682 028, ERNAKULAM DISTRICT.

12. MADHUKUMAR VASRMA, S/O. KAMALA DEVI
THAMPURATTY, RES.AT SUDARSANA PALACE, THONALLOOR
PANDALAM, PATHANAMTHITTA DIST.REP. BY P.SUNDER
RAJAN,S/O.S.R.BHAGYAM, AGED 61, RES.KALABHAVAN
ST.MARTIN CHURCH ROAD, PALARIVATTOM,KOCHI-682 025,
ERNAKULAM,DULY CONSTITUTED POWER OF ATTORNY OF PET

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: DEFENDANTS:
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1. THE VILLAGE OFFICER, K.D.H. VILLAGE
DEVICOLAM, DEVICOLAM TALUK.

2. THE TAHASILDAR, DEVICOLAM TALUK,
DEVICOLAM.

3. THE STATE OF KERALA REPRESENTED BY
CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

4. TATA TEA LIMITED, MUNNAR.

BY ADV. SRI.JOSEPH MARKOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 14591 OF 2004

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF PLAINT IN OS NO.61 OF 2003 OF MUNSIFF COURT.

EXT.P2 : TRUE COPY OF COUNTER AFFIDAVIT IN OS NO.61 OF 2003 BY RESPONDENTS 1 TO 3.

EXT.P3 : TRUE COPY OF COUNTER AFFIDAVIT IN OS NO.61 OF 2003 BY RESPONDENT NO.4.

EXT.P4 : TRUE COPY OF ORDER IN OS NO.61 OF 2003 BY MUNSIFF MAGISTRATE COURT, DEVICOLAM.

EXT.P5 : TRUE COPY OF ORDER IN CMA NO.2 OF 2003 BY ADDITIONAL DISTRICT COURT THODUPUZHA.

EXT.P6 : TRUE COPY OF THE ORDER IN IA NO.33 OF 2004 IN CMA NO.2 OF 2004 OF DISTRICT COURT, THODUPUZHA DT.19.03.04.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 14591 OF 2004

Dated this the 27th day of June, 2007

JUDGMENT

Impugned in this Writ Petition under Article 227 is Ext.P4 order passed by the learned Munsiff vacating an order of temporary injunction which was initially granted and Et.P6 judgment of the District Judge confirming Ext.P4. The learned counsel for the respondent submits that since there was no stay from this Court the suit has been tried and dismissed and that a regular appeal has been instituted by the petitioner against the judgment and decree. Learned counsel for the petitioner sought time to verify this aspect of the matter.

2. Having gone through Exts.P4 and P6, I am of the view that even if the suit is pending, there is no warrant for interfering with Exts.P4 and P6 under the visitorial jurisdiction of this court since Ext.P6, the appellate judgment cannot be said to be tainted to such an extent as to warrant correction under Article 227. After all, Exts.P4 and P6 were interim orders and findings therein are to be treated by the learned Munsiff as provisional. The Writ Petition will stand disposed of issuing the following directions:

If the suit is even now pending, the learned Munsiff will try the suit and take a decision in the suit uninfluenced by any of the observations

contained in Exts.P4 and P6. Decision will be taken by the learned Munsiff only on the basis of evidence adduced by the parties at trial.

PIUS C. KURIAKOSE, JUDGE

btt